

18 NOV 1975

CONGRESSIONAL OVERSIGHT

1. Problem

Assuming that Congress will adjust the congressional oversight status quo for the Central Intelligence Agency and/or the Intelligence Community, identify the key issues on which Administration influence should be brought to bear.

2. Discussion

While the need for some kind of change in congressional oversight is self-evident, there also are some sound reasons why the Executive should not become strongly, publicly assertive on the need for change. ILLEGIB

a. In principle it is up to Congress to put its house in order. The Executive Branch should be alert to questions of executive versus legislative prerogatives, i.e., "oversight" and product receipt versus the basic executive character of intelligence.

b. Practically and politically six committees of Congress are now seized with explicit jurisdiction over the CIA alone. If the adjustment in oversight is extended to the Intelligence Community at large, beyond CIA and Defense agencies, the number of committees exercising extant jurisdiction is multiplied. Any adjustment in the oversight will directly impact on the status quo and the Executive is wise to distance itself from the resulting jockeying arising out of jurisdictional disputes.

c. Active Executive Branch support for adjustment in oversight, to the extent that a loss of extant jurisdiction is involved, could affect the ability of the key members of these status quo committees to work out suitable accommodations for themselves and will be resented on that basis.

3. Principles and Considerations to Guide Executive Branch Action

a. Stability: Any change should provide sufficient stability to minimize turnover of membership. ILLEGIB

(1) Stable membership will assure sufficient long-term exposure to intelligence problems enabling the members to acquire a basis for informed judgments. It also reduces the numbers of individuals exposed to sensitive operational information. In the context of a joint committee, these considerations would argue for membership to be composed of the chairman and ranking minority member of the several committees now exercising full or substantial legislative oversight, e.g., Armed Services, Appropriations, Foreign Affairs and possibly Government Operations.

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(2) Such a make up would also tend to militate against jurisdictional conflicts with existing committees which in turn could prolong an unstable and undesirable situation on the Hill permitting numerous committees to successfully assert jurisdiction, leading to further proliferation of sensitive information and undermining intelligence's capability to do its job.

b. Exclusivity: The Executive Branch must recognize the authority and responsibility of the Congress to review and study on a continuing basis the application, administration, execution and effectiveness of statutes applying to the Central Intelligence Agency and the Intelligence Community. To the extent, however, that the data base which must be made available for that review and study is in the sensitive area of intelligence sources and methods it is imperative that the oversight structure in Congress be provided exclusive jurisdiction.

(1) This imposes an added responsibility on that committee structure because not only must the members be concerned with the CIA and Intelligence Community charter, but they must also act as surrogates on a broader spectrum of interests for other committees whose jurisdictional interest may somehow be indirectly but substantially affected (i.e., security exchange, banking and currency, Internal Revenue, etc.). Carrying this surrogate responsibility requires trust between the membership of the Oversight Committee and the rest of the Congress.

(2) The Executive Branch's principal interest in exclusivity is to assure a secure environment for sensitive matters, as it relates to the success of ongoing activities, and to regain whatever credibility has been lost with cooperative governments, organizations, and individuals as to the capability of the U.S. Government to protect their confidences with us.

(3) The fact that six committees of the Congress are exercising oversight of covert actions under Section 662 of the Foreign Assistance Act amendments of 1974 unnecessarily widens the audience and increases the risk of disclosure. Yes

(4) A joint committee, representing the interests of both Houses, would be preferable, but prerogatives of independence and pride may stand between the two Houses agreeing on such a structure.

c. Security: The absence of sound procedures and failure to come to grips with the need to establish rules governing responsible handling of classified information in the Congress has been demonstrated to the Congress as a result of incidents in both Houses. There have been some proposals to close the gap, but it is doubtful that Congress will accomplish any meaningful action at its own initiative and certainly not by the time any new oversight structure comes into being.

(1) Security is a very controversial area for the Executive to push with Congress because the prerogatives of Congress, as Congressmen see it, are being offended and because the Executive's classification system is in generally ill repute on the Hill.

(2) Nevertheless, the Executive Branch has a sound constitutional basis for being assertive in this area. It must present its interest as narrowly and as precisely as possible to avoid the trigger words, "classified," "national security," etc. The Executive position can be better expressed by stressing the need to protect confidences and the capabilities of cooperating sources and covert collection systems.

(3) The Executive objective at a minimum should be that:

(a) Such information must be limited to the membership and appropriate staff of the exclusive oversight structure;

(b) Such information is not subject to publication by the committee at its sole initiative. Any one of a number of formulas for prior consultation, providing an opportunity for the eventual assertion of executive privilege, would seem sufficient.

*Separate  
problem*

(c) An effective criminal deterrent, much like the Agency proposed legislation to protect against the unauthorized disclosure of sensitive intelligence sources and methods, should be enacted as part of strengthening congressional oversight. The quid pro quo of obtaining authorized access to truly sensitive intelligence sources and methods carries with it a special responsibility, the violation of which involves a sufficient "public interest" to support criminal punishment. The Joint Committee on Atomic Energy is often cited on the Hill as the model of a congressional committee which can keep good secrets secret. What must not be overlooked is that the legislation establishing that Committee also enacted the Restricted Data statute which provides the type of criminal deterrent in the Agency's draft legislation. Such legislation must be drawn with due regard for constitutional requirements and without interfering with the reporting of information or abuses to appropriate congressional or executive authorities. It also should not apply to any class of people beyond those who obtain authorized access to the sensitive information as a result of a privity of relationship to the Government, thus completely avoiding any possible conflict with First Amendment rights. Clearly, legislation on a Joint Committee on Intelligence provides an opportunity for closing a serious gap in the criminal laws of the United States.

4. Information Needed for Oversight

Any new congressional oversight committee, if it is to be in harmony with the principles outlined above, must have access to information so as to be in a position to assure the Congress and the Nation it is meeting its responsibility for watchfulness.

a. In proposing that this oversight activity be conducted for the main part outside of the public domain, the Executive Branch should recognize the Oversight Committee may feel a responsibility for digging into matters more deeply than would be the case if the normal mechanisms (press, interest groups, other committees of Congress, etc.), were not blocked from access. ✓

b. At a minimum this will impose a positive responsibility and duty on the agency(ies) affected to be particularly sensitive to the position in which the committee and its members find themselves and to volunteer and report those things which are not normally available to the leavening of outside groups but are of interest to them. ✓

c. On the other hand, there is a danger of leaning so far towards a congressional surveillance concept that the Oversight Committee assumes Executive responsibility. From a practical standpoint, a committee "fully and currently informed," of everything the CIA or Intelligence Community is doing, would require an enormous staff. ✓

d. More importantly, there are aspects of CIA's work performed for the President under constitutional responsibilities he does not share with the Congress, matters which are properly subject to the exercise of Executive Privilege. ?

e. To apply the "fully and currently informed" concept in extremis, would inevitably lead to a conflict between the constitutional needs of the President and congressional "watchfulness." It would, therefore, appear in the best interest of both the Executive and the Congress that any new oversight structure start off on a basis with which the committee structure has the capacity to comply and still not raise separation of power problems. No

f. "Fully and currently informed" represents an assertion of the maximum of congressional power (of dubious constitutionality), but it is clear that if the Congress is to back off of that concept, the Executive must be prepared to make a number of concessions beyond the normal Executive Branch/Congressional committee relationship if a new structure is to work.

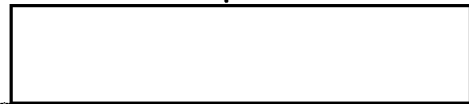
## 5. Recommendation

It is recommended that the Director of Central Intelligence:

a. Approve the concept that the Executive Branch should not become strongly and publicly assertive on the need for change in the manner in which the Congress exercises oversight of the CIA and the Intelligence Community as a whole; No

b. Approve the principles and considerations to guide Executive Branch action as outlined in paragraph 3 and the points made in paragraph 4 concerning the provision of information to an Oversight Committee. No -

c. Support the positions outlined in paragraphs 3 and 4 in discussions with other elements of the Executive Branch involved with matters concerning Congressional oversight of intelligence activities. 7



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I think this has to be  
the subject of interagency  
discussion via the  
group -



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